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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
DOUG CLERGET dba CLERGET)
COMPANY,)
Appellant,)
WENDAL KUEAKER,)
Intervenor-Appellant))
v.)
PUGET SOUND AIR POLLUTION))
CONTROL AGENCY,)
Respondent.)

PCHB No. 79-137

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER
(Amended)

This matter, the appeal from the issuance of two \$250 civil penalties (Nos. 4316 and 4317), came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Chris Smith, and David Akana (presiding) at a formal hearing in Tacoma on December 7, 1979.

Appellant Doug Clerget appeared pro se; appellant Wendal Kueaker appeared pro se; respondent was represented by its attorney, Keith D. McGoffin.

1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes
3 these

4 FINDINGS OF FACT

5 I

6 On June 11, 1979 in response to a complaint, respondent's
7 inspector visited property located at 34720 Pacific Highway South in
8 Federal Way, which property was owned by appellant Kueaker. Upon
9 arriving, he saw smoke and noticed flyash being deposited on
10 property of another person. The source of the smoke and flyash was
11 two landclearing fires, each 8' high by 10' long by 15' wide,
12 consisting of natural vegetation. The person working at the site,
13 named Jordan, was advised to tell appellant Clerget to stop
14 burning. The following day, June 12, 1979, the inspector returned
15 to the site and noticed black smoke coming from the northernmost
16 pile. Upon closer investigation, a burning rubber tire was found in
17 the pile.

18 II

19 Appellant Kueaker is the owner of the property who caused the
20 site to be cleared and burned. Appellant Kueaker hired Jordan, a
21 contractor, to clear and burn the property. Appellant Clerget was
22 asked to do appellant Kueaker a favor by verifying that Jordan did
23 the job, but was not responsible for how it was done.

24 Appellant Kueaker had secured a permit from the fire department
25 for a fire, which permit expired prior to the instant burn.

1 Appellant Clerget secured another permit from the fire department
2 for appellant Kueaker. Neither Kueaker nor Clerget read pertinent
3 provisions of Regulation I, reproduced on the reverse side of the
4 permit, which stated that a population density verification from
5 respondent was necessary for a landclearing fire in an urbanized
6 area. Consequently, appellants did not receive a population density
7 verification from respondent as required by Section 8.06 of
8 Regulation I.

9 For the foregoing occurrences, Kueaker, Clerget, and Jordan were
10 issued a Notice of Violation from which followed two \$250 civil
11 penalties for the alleged violations of Sections 9.04, 8.06(3) and
12 8.02(3) of Regulation I. Appellants Kueaker and Clerget appealed.

3 III

14 Pursuant to RCW 43.21B.260, respondent has filed a certified
15 copy of its Regulation I and amendments thereto which we notice.

16 Section 8.02(3) makes it unlawful for any person to cause or
17 allow an outdoor fire containing prohibited materials, including
18 petroleum products, rubber products or any substance which normally
19 emits dense smoke. Rubber tires are such prohibited materials.

20 Section 8.06(3) makes it unlawful for any person to cause or
21 allow any outdoor fire for landclearing burning within an urbanized
22 area without a population density verification.

23 Section 9.04 makes it unlawful for any person to cause or allow
24 the discharge of particulate matter which becomes deposited upon the
25 real property of others.

26 Section 3.29 provides for a civil penalty of up to \$250 per day

1 for each violation of Regulation I.

2 IV

3 Any Conclusion of Law which should be deemed a Finding of Fact
4 is hereby adopted as such.

5 From these Findings, the Board comes to these

6 CONCLUSIONS OF LAW

7 I

8 Appellant Kueaker, the owner and developer of the property, and
9 holder of the fire department permits, caused or allowed the
10 violations of Sections 9.04, 8.02(3) and 8.06(3) as alleged. The
11 imposition of the two \$250 civil penalties as to him was proper and
12 is reasonable in amount.

13 II

14 Appellant Clerget, a friend of Kueaker, did not personally cause
15 or allow the violations in question. The imposition of the two \$250
16 civil penalties as to him should be vacated.

17 III

18 Any Finding of Fact which should be deemed a Conclusion of Law
19 is hereby adopted as such.

20 From these Conclusions the Board enters this

21 ORDER

22 1. The two \$250 civil penalties imposed upon Kueaker are
23 affirmed.

2. The two \$250 civil penalties imposed upon Clerget are stricken.

DATED This 10th day of January, 1980

POLLUTION CONTROL HEARINGS BOARD

W. W. Washington
WAT W. WASHINGTON, Chairman

Chris Smith
CHRIS SMITH, Member

David Akana
DAVID AKANA, Member